

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: July 11, 2003

TO : Victoria E. Aguayo, Regional Director
William M. Pate, Jr., Regional Attorney
James A. Small, Assistant to the Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: United Brotherhood of Carpenters, Local 1506
(Cutting Edge Drywall)
Case 21-CC-3321

This case was submitted for advice as to whether either the Union's threat to lawfully display banners and distribute leaflets informing the public about the use of the primary employer on neutral employers' projects, or its statement to a neutral that the Union "had people ready," violated Section 8(b)(4)(ii)(B).

We agree with the Region that the Union did not unlawfully threaten to engage in coercive secondary activity because a mere threat to banner and handbill is not tantamount to a coercive threat to picket or engage in other confrontational conduct; we also agree that the statement that the Union "had people ready" was not a threat to engage in coercive conduct.

The Union has an area standards dispute with Cutting Edge Drywall, and has engaged in lawful primary picketing at common situs construction sites and lawful handbilling at neutral employers' premises. On May 22, 2003, the Union sent a letter to Ocean West Builders, a general contractor using Cutting Edge. The letter stated that the Union's "new lawful and aggressive public information campaign" includes "highly visible lawful banner displays and distribution of handbills" at the premises of firms involved with projects where Cutting Edge is employed.

On or about the same day, Schmidt, the building manager for a building which had contracted with Ocean West to perform some remodeling, including some drywall work performed by Cutting Edge, visited the suite being remodeled. Two drywall employees were speaking with two other men, one of whom approached Schmidt and identified himself as Union representative Cordero. Schmidt thought to herself that the Union might do something similar to what she had heard they had done several months previously at another of her company's buildings, where Cutting Edge was not working. That incident involved Union handbilling,

noise, and display of a banner. Schmidt told Cordero that she was familiar with the Union's tactics, and expressed her opinion that it wasn't right that the Union could come on private property and become a nuisance. Cordero said they were there to help these people, looking in the direction of the drywall employees. Schmidt then told Cordero that she didn't want demonstrators at this building; Cordero said they did have people ready. No other Union conduct has occurred at that building.

Although leafleting is not coercive,¹ traditional picketing or confrontational conduct tantamount to picketing is coercive within the meaning of Section 8(b)(4)(ii). The Board will find an unqualified or ambiguous union threat to picket at a common situs to violate Section 8(b)(4)(ii)(B) absent assurances that the picketing will be lawful.² Thus, the Union's letter would have violated Section 8(b)(4)(ii)(B) if it had constituted an unqualified threat to picket rather than an unqualified threat to banner and handbill against the primary at neutral Ocean West sites. We conclude, however, that the Union's letter did not constitute a threat to picket or engage in other unlawfully confrontational conduct. We have argued that bannerling constitutes coercive conduct in certain limited circumstances: (1) where very large banners contain "intentionally misleading" language allowing the public to reasonably believe that the neutral is involved in a primary labor dispute; and (2) where very large banners surrounded by union agents located in close proximity to the neutral site constitute confrontational activity.³ We have not as of yet been presented with the issue whether mere bannerling activity, without more, amounts to coercive picketing.

¹ DeBartolo Corp. v. Florida Gulf Coast BCTC, 485 U.S. 568 (1988).

² Sheet Metal Workers Local 418 (Young Plumbing), 227 NLRB 300, 312 (1976) (generalized threat to picket common situs unlawful as not carrying "a presumption that the picketing would conform to established restrictions.") Compare Amalgamated Packinghouse Workers Packerland Packaging Co., Inc., 218 NLRB 853 (1975) (union's threat to picket found lawful where it narrowly named only the primary, assured the union's intent to abide by the law, and disclaimed any intent to engage in secondary boycott).

³ See, e.g., Carpenters Local 209 (Kings Hawaiian Restaurant & Bakery), Case 31-CC-2103, Appeals Minute dated September 25, 2002; Mountain West Regional Council of Carpenters, Case 27-CC-873, Advice Memorandum dated December 18, 2002.

Here, the Union's letter to Ocean West simply threatens to display banners in addition to distributing leaflets; it asserts the conduct will be lawful. There is no mention as to the message on the banner or how the banner will be displayed. In these circumstances, we cannot say the mere threat to banner and handbill is a threat to engage in coercive activity. In addition whether mere bannering is coercive or not is best decided in the first instance where actual bannering is being conducted.

Similarly, we find that Cordero's statement that the Union "had people ready" in response to building manager Schmidt's statement that she didn't want demonstrators at the neutral building was not a threat of unlawful coercive conduct. Even if Schmidt had hearsay knowledge of previous, possibly coercive, Union conduct at other sites not involving Cutting Edge, there is no reason to believe Cordero understood her to be referring to such conduct. Rather, we would find that when Cordero stated that the Union "had people ready" when Schmidt said she didn't want demonstrators at the building, he was referring to the Union's conduct with regard to its dispute with Cutting Edge, including primary picketing at common situses and secondary handbilling which, the Region has concluded, has been lawful. Thus, Cordero did not respond ambiguously to any statement indicating that Schmidt expected unlawful Union conduct. In these circumstances, we cannot say that the Union's statement was a coercive threat.

B.J.K.